

Subsec. (a)(4). Pub. L. 109-59, §1601(b)(5), substituted “The Federal credit instrument” for “Project financing” and inserted “that also secure the project obligations” before period at end.

Subsec. (b)(1). Pub. L. 109-59, §1601(c)(1), substituted “eligibility requirements” for “eligibility criteria”.

Subsec. (b)(2)(A)(iii), (iv), (vi). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (b)(2)(A)(viii). Pub. L. 109-59, §1602(b)(2), inserted “and chapter 1” after “this chapter”.

Subsec. (b)(2)(B). Pub. L. 109-59, §1601(c)(2), inserted “, which may be the Federal credit instrument,” after “obligations”.

Subsec. (c). Pub. L. 109-59, §1602(b)(5), substituted “this chapter” for “this subchapter” in introductory provisions.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 603. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 602;

(B) to refinance interim construction financing of eligible project costs of any project selected under section 602;

(C) to refinance existing Federal credit instruments for rural infrastructure projects; or

(D) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(i) is selected under section 602; or

(ii) otherwise meets the requirements of section 602.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) MAXIMUM AMOUNT.—The amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the se-

cured loan does not receive an investment grade rating, the amount of the senior project obligations.

(3) PAYMENT.—A secured loan under this section—

(A) shall—

(i) be payable, in whole or in part, from—

(I) tolls;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; or

(IV) other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

(4) INTEREST RATE.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(B) RURAL INFRASTRUCTURE PROJECTS.—

(i) IN GENERAL.—The interest rate of a loan offered to a rural infrastructure project under this chapter shall be at ½ of the Treasury Rate in effect on the date of execution of the loan agreement.

(ii) APPLICATION.—The rate described in clause (i) shall only apply to any portion of a loan the subsidy cost of which is funded by amounts set aside for rural infrastructure projects under section 608(a)(3)(A).

(C) LIMITED BUYDOWNS.—The interest rate of a secured loan under this section may not be lowered by more than the lower of—

(i) 1½ percentage points (150 basis points); or

(ii) the amount of the increase in the interest rate.

(5) MATURITY DATE.—The final maturity date of the secured loan shall be the lesser of—

(A) 35 years after the date of substantial completion of the project; and

(B) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.

(6) NONSUBORDINATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(B) PREEXISTING INDENTURE.—

(i) IN GENERAL.—The Secretary shall waive the requirement under subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—

- (I) the secured loan is rated in the A category or higher;
- (II) the secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and
- (III) the TIFIA program share of eligible project costs is 33 percent or less.
- (ii) **LIMITATION.**—If the Secretary waives the nonsubordination requirement under this subparagraph—
- (I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and
- (II) the obligor shall be responsible for paying the remainder of the subsidy cost, if any.
- (7) **FEES.**—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.
- (8) **NON-FEDERAL SHARE.**—The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.
- (9) **MAXIMUM FEDERAL INVOLVEMENT.**—The total Federal assistance provided on a project receiving a loan under this chapter shall not exceed 80 percent of the total project cost.
- (c) **REPAYMENT.**—
- (1) **SCHEDULE.**—The Secretary shall establish a repayment schedule for each secured loan under this section based on—
- (A) the projected cash flow from project revenues and other repayment sources; and
- (B) the useful life of the project.
- (2) **COMMENCEMENT.**—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.
- (3) **DEFERRED PAYMENTS.**—
- (A) **IN GENERAL.**—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.
- (B) **INTEREST.**—Any payment deferred under subparagraph (A) shall—
- (i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and
- (ii) be scheduled to be amortized over the remaining term of the loan.
- (C) **CRITERIA.**—
- (i) **IN GENERAL.**—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.
- (ii) **REPAYMENT STANDARDS.**—The criteria established pursuant to clause (i) shall in-

clude standards for reasonable assurance of repayment.

(4) **PREPAYMENT.**—

(A) **USE OF EXCESS REVENUES.**—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

(B) **USE OF PROCEEDS OF REFINANCING.**—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(d) **SALE OF SECURED LOANS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

(2) **CONSENT OF OBLIGOR.**—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

(e) **LOAN GUARANTEES.**—

(1) **IN GENERAL.**—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan under this section if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) **TERMS.**—The terms of a loan guarantee under paragraph (1) shall be consistent with the terms required under this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

(Added Pub. L. 105-178, title I, §1503(a), June 9, 1998, 112 Stat. 245, §183; renumbered §603 and amended Pub. L. 109-59, title I, §§1601(d), 1602(b)(3), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247; Pub. L. 112-141, div. A, title II, §2002, July 6, 2012, 126 Stat. 614.)

AMENDMENTS

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to secured loans.

2005—Pub. L. 109-59, §1602(d), renumbered section 183 of this title as this section.

Subsec. (a)(1). Pub. L. 109-59, §1601(d)(1), in subpars. (A) and (B) inserted “of any project selected under section 602” after “costs”, added subpar. (C), and struck out concluding provisions which read as follows: “of any project selected under section 182.”

Subsec. (a)(3). Pub. L. 109-59, §1602(b)(3), substituted “602(b)(2)(B)” for “182(b)(2)(B)”.

Subsec. (a)(4). Pub. L. 109-59, §1601(d)(2), substituted “The execution” for “The funding” and struck out before period at end “, except that—

“(A) the Secretary may fund an amount of the secured loan not to exceed the capital reserve subsidy amount determined under paragraph (3) prior to the obligations receiving an investment-grade rating; and

“(B) the Secretary may fund the remaining portion of the secured loan only after the obligations have re-

ceived an investment-grade rating by at least 1 rating agency”.

Subsec. (b)(2). Pub. L. 109–59, §1601(d)(3)(A), inserted “the lesser of” before “33 percent” and “or, if the secured loan does not receive an investment grade rating, the amount of the senior project obligations” before period at end.

Subsec. (b)(3)(A)(i). Pub. L. 109–59, §1601(d)(3)(B), inserted “that also secure the senior project obligations” after “sources”.

Subsec. (b)(4). Pub. L. 109–59, §1601(d)(3)(C), struck out “marketable” before “United States Treasury securities”.

Subsec. (b)(8). Pub. L. 109–59, §1602(b)(5), substituted “this chapter” for “this subchapter”.

Subsec. (c)(3) to (5). Pub. L. 109–59, §1601(d)(4), redesignated pars. (4) and (5) as (3) and (4), respectively, in par. (3)(A), struck out “during the 10 years” after “at any time”, in par. (3)(B)(ii), substituted “loan” for “loan beginning not later than 10 years after the date of substantial completion of the project in accordance with paragraph (1)”, and struck out heading and text of former par. (3). Text read as follows: “The sources of funds for scheduled loan repayments under this section shall include tolls, user fees, or other dedicated revenue sources.”

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 604. Lines of credit

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available to 1 or more obligors lines of credit in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(3), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account the rating opinion letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the senior obligations of the project receiving an investment-grade rating from 2 rating agencies.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

(2) MAXIMUM AMOUNTS.—The total amount of a line of credit under this section shall not ex-

ceed 33 percent of the reasonably anticipated eligible project costs.

(3) DRAWS.—Any draw on a line of credit under this section shall—

(A) represent a direct loan; and

(B) be made only if net revenues from the project (including capitalized interest, but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

(4) INTEREST RATE.—Except as provided in subparagraphs (B) and (C) of section 603(b)(4), the interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities, as of the date of execution of the line of credit agreement.

(5) SECURITY.—A line of credit issued under this section—

(A) shall—

(i) be payable, in whole or in part, from—

(I) tolls;

(II) user fees;

(III) payments owing to the obligor under a public-private partnership; or

(IV) other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

(6) PERIOD OF AVAILABILITY.—The full amount of a line of credit under this section, to the extent not drawn upon, shall be available during the 10-year period beginning on the date of substantial completion of the project.

(7) RIGHTS OF THIRD-PARTY CREDITORS.—

(A) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on a line of credit under this section.

(B) ASSIGNMENT.—An obligor may assign a line of credit under this section to—

(i) 1 or more lenders; or

(ii) a trustee on the behalf of such a lender.

(8) NONSUBORDINATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(B) PRE-EXISTING INDENTURE.—

(i) IN GENERAL.—The Secretary shall waive the requirement of subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—

(I) the line of credit is rated in the A category or higher;

(II) the TIFIA program loan resulting from a draw on the line of credit is pay-